

Complaint Form 10 CV 944M  
Section 1: Caption

MARIO GORDON 08A5817-Plaintiff

Defendants- 1. T. Clark 5. Registered Nurse Boyd  
2. Sgt. Edwards 6. Registered Nurse John Doe 1  
3. J. Portun 7. C.O. John Doe #2  
4. C.O. Woodward 8. C.O. John Doe #3

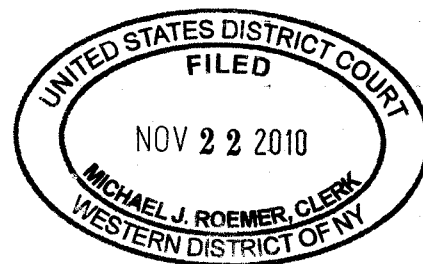
Section 2: Jurisdiction

Plaintiff has brought this action pursuant to the Civil Right statute, 42 U.S.C. §§ 1983 and that the court has jurisdiction over said claims under 28 U.S.C. §§ 1331, 1343 (3) and (4), and 2201

Section 3: Parties to This Actions

1. Correction Officer - T. Clark, Auburn Correctional P.O. Box 618 Auburn, NY 13024
2. Correction Officer - J. Portun, Auburn Correctional P.O. Box 618 Auburn, NY 13024
3. Correction Officer - Woodward, Auburn Correctional P.O. Box 618 Auburn, NY 13024
4. Sergeant - Edwards, Auburn Correctional P.O. Box 618 Auburn, NY 13024
5. Registered Nurse - Boyd, Auburn Correctional P.O. Box 618 Auburn, NY 13024
6. Registered Nurse - John Doe, Auburn Correctional P.O. Box 618 Auburn, NY 13024
7. Correction Officer - John Doe 1, Auburn Correctional P.O. Box 618 Auburn, NY 13024
8. Correction Officer - John Doe 2, Auburn Correctional P.O. Box 618 Auburn, NY 13024

Section 4: Previous Lawsuit



5. The approximate date the action was filed: \_\_\_\_\_

6. What was the disposition of the case?

Is it still pending? Yes \_\_\_\_\_ No \_\_\_\_\_

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

\_\_\_\_\_ Dismissed (check the box which indicates why it was dismissed):

\_\_\_\_\_ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

\_\_\_\_\_ By court for failure to exhaust administrative remedies;

\_\_\_\_\_ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

\_\_\_\_\_ By court due to your voluntary withdrawal of claim;

\_\_\_\_\_ Judgment upon motion or after trial entered for

\_\_\_\_\_ plaintiff

\_\_\_\_\_ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes ☒ No \_\_\_\_\_

If Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): MARIO Gordon

Defendant(s): Deputy Ramos, Captain Prestley, Correction Officers Taylor, Barker, Pollard, Aguino, Siedemann, Villeta, Harris, Orindy, Hughes, Rosado

2. District Court: Southern District

3. Docket Number: 09 Civ. 1914 (RMB) (RLE)

4. Name of District or Magistrate Judge to whom case was assigned: Ronald L. Ellis

5. The approximate date the action was filed: February 27, 2009

6. What was the disposition of the case?

Is it still pending? Yes ☒ No \_\_\_\_\_

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

### 5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- |                    |                             |                                      |
|--------------------|-----------------------------|--------------------------------------|
| • Religion         | • Access to the Courts      | • Search & Seizure                   |
| • Free Speech      | • False Arrest              | • Malicious Prosecution              |
| • Due Process      | • <u>Excessive Force</u>    | • <u>Denial of Medical Treatment</u> |
| • Equal Protection | • <u>Failure to Protect</u> | • Right to Counsel                   |

**Please note that** it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

**Fed.R.Civ.P. 8(a)** states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

### Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

**A. FIRST CLAIM:** On (date of the incident) 10-22-10, October 22, 2010,  
 defendant (give the name and position held of each defendant involved in this incident) Sgt. Edwards, C.O. Clark, C.O. Portun, C.O. John Doe 1, C.O. John Doe 2, C.O. Woodard, R.N. Boyd, R.N. John Doe

did the following to me (briefly state what each defendant named above did): On 10-22-10 plaintiff was taken out of cell by extraction team which consisted (Sgt) Edwards, (C.O.) Clark, (C.O.) Portun, (C.O.) John Doe 1, and (C.O.) John Doe 2. When plaintiff was brought into the Facility Depot C.O.'s Clark, Portun, John Doe 1, John Doe 2 lifted plaintiff into the air and skinned him down on said table causing a 1/4 inch deep laceration and 1 inch wide cut to plaintiff chin. C.O. Clark then started to punch plaintiff on → cont

The constitutional basis for this claim under 42 U.S.C. § 1983 is: \_\_\_\_\_

The relief I am seeking for this claim is (briefly state the relief sought): \_\_\_\_\_

**Exhaustion of Your Administrative Remedies for this Claim:**

Did you grieve or appeal this claim? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, what was the result? \_\_\_\_\_

Did you appeal that decision? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, what was the result? \_\_\_\_\_

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: \_\_\_\_\_

**A. SECOND CLAIM:** On (date of the incident) \_\_\_\_\_,

defendant (give the name and position held of each defendant involved in this incident) \_\_\_\_\_

left side of face while saying "The next time you better listen and come out of your cell, do you hear me?" Every time defendant said "Do you hear me?" was followed by a blow to left side of plaintiff's face. C.O. Woodward was sitting at a desk not intervening and Sgt. Edwards said "keep going he's scared shirtless". Plaintiff was then seen by Registered Nurse John Doe and that's when C.O. Woodward put on the tape recorder (camera). Nurse John Doe stated on camera "It doesn't look like anything but a little cut on your mouth". Plaintiff was then put on suicide watch when Registered Nurse Boyd stated "the hole is in your chin and since it's going up you can't receive stitches". C.O. Woodward took pictures of injury and plaintiff was not given stitches nor painkillers and was left with a profuse bleeding hole/gash laceration in chin.

#### Count One: Excessive Force, Assault

Defendants Clark, Portun, John Doe 1, and John Doe 2 used excessive force while defendant Clark assaulted plaintiff while he was restrained.

#### Count two: Breach of Duty to Protect

Defendants Sgt Clark and C.O. Woodward exercised deliberate indifference to plaintiff's health and safety by failing to protect him from C.O. Clark attack immediately as soon as they saw it occurring. Instead these defendants merely acknowledge to plaintiff that they saw the attack and despite seeing that plaintiff had suffered and was suffering serious injuries the defendants failed to stop the attack.

Count Three: Failure to Administer Adequate Medical Remedy.

→ continued

did the following to me (briefly state what each defendant named above did): Defendants Registered Nurse John Doe and Registered Nurse Boyd exercised deliberate indifference to plaintiff's health by failing to provide adequate medical care to him following attack by C.O. Clark. Defendant R.N. Boyd intentionally did not administer or order stitches to a deep cut in plaintiff's chin and refused to fulfill plaintiff request for follow up care. As a result of R.N. Boyd deliberate indifference to plaintiff condition plaintiff suffered further pain and mental anguish. In addition R.N. Boyd refused to provide adequate pain medication. → cont

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Eighth Amendment right to be free of Assault/Failure to protect and Right to Adequate Medical Care

The relief I am seeking for this claim is (briefly state the relief sought): Damages and injunctive relief

#### Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? \_\_\_\_\_ Yes ☒ No \_\_\_\_\_ If yes, what was the result? \_\_\_\_\_

Did you appeal that decision? \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, what was the result? \_\_\_\_\_

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: Plt on suicide watch with no supplies then immediately moved to Southport Correctional on 10-26-10

If you have additional claims, use the above format and set them out on additional sheets of paper.

#### 6. RELIEF SOUGHT

*Summarize the relief requested by you in each statement of claim above.*

The plaintiff prays for judgment in his favor and damages in his favor against all defendant in an amount sufficient to compensate him for pain and mental anguish suffered by him due to the deliberate indifference and intentional misconduct of defendants but in no event less than \$500,000.00

Do you want a jury trial? Yes ☒ No \_\_\_\_\_




Plaintiff was unable to eat properly for 1 week after incident until plaintiff was taken off suicide watch and moved to Southport Correctional where plaintiff got better because the unstitched cut was bleeding profusely everytime plaintiff opened his mouth and unstitched cut closed by itself in 20 days.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 4, 2010  
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

  
M. Gordon

Signature(s) of Plaintiff(s)